

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT BONÉ, et al.,

Plaintiffs,

v.

WELLS FARGO HOME MORTGAGE,
et al.,

Defendants.

No. C 10-2011 PJH

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS IN PART AND
DENYING IT IN PART**

Defendants' motion pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss the complaint for failure to state a claim came on for hearing before this court on August 25, 2010. Plaintiffs appeared by their counsel David Sturgeon-Garcia, and defendants appeared by their counsel Edward R. Buell. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS the motion in part and DENIES it in part as follows, for the reasons stated at the hearing.

1. The motion to dismiss the first cause of action for declaratory relief is GRANTED, with leave to amend to clarify the claims being asserted and the legal or statutory basis for the claims. Claims based on statutory violations should be set forth as separate causes of action (e.g., TILA, RESPA), regardless of whether they are pled as claims under the Declaratory Judgment Act, or as statutory claims seeking declaratory or other relief.

2. The motion to dismiss the second cause of action for injunctive relief is GRANTED. The dismissal is WITH PREJUDICE. In addition, however, plaintiffs shall

1 amend the prayer for relief to specify the exact nature of the injunctive relief sought.

2 3. The motion to dismiss the third cause of action for slander of title is DENIED.

3 4. The motion to dismiss the fourth cause of action for cancellation of cloud on
4 title is DENIED.

5 5. The motion to dismiss the fifth cause of action for intentional infliction of
6 emotional distress is DENIED.

7 6. The motion to dismiss the sixth cause of action for negligent infliction of
8 emotional distress is GRANTED. The dismissal is WITH PREJUDICE.

9 The amended complaint shall be filed no later than September 22, 2010. No claims
10 or causes of action that are not subsumed in the original complaint shall be pled in the
11 amended complaint.

12
13 **IT IS SO ORDERED.**

14 Dated: August 25, 2010



PHYLLIS J. HAMILTON
United States District Judge